

July 19, 2004

2005 FEB 14 PM 3:45

Patrick Smith  
12335 Santa Monica Blvd  
Los Angeles, CA 90025

Patent and Trademark Office  
2121 Crystal Drive  
Arlington, VA 22202

Nicholas P. Godici,  
Commissioner for Patents

*batch 3  
2/24/05*

**RECEIVED**  
MAR 14 2005  
OFFICE OF PETITIONS

*08377449*

Re: Patent No. 5,598,947

date of patent, Feb 4, 1997

Dear Commissioner Godici:

With regard to maintenance fees, my patent comes up for 7.5 years fee August 5, 2004

I am told that I can defer payment of the fee for 6 months, by paying a late payment of \$65.00 within 6 months, February 5, 2005

My concern is whether or not that is correct.

If not correct, would someone please inform me, or if correct would someone inform me, I would greatly appreciate it.

Sincerely,

Patrick Smith

Return To:

USPTO  
Home  
PageUnited States  
Patent and  
Trademark Office

2005 FEB 14 PM 3:46

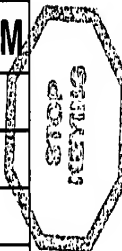
Finance  
Online  
Shopping  
Page

RECEIVED

MAR 14 2005

OFFICE OF PETITIONS

<b>Patent Bibliographic Data</b>				<b>08/03/2004 10:06 AM</b>	
Patent Number: 5598947		Application Number: 08377449			
Issue Date: 02/04/1997		Filing Date: 01/24/1995			
Title: AUTOMATIC HOT FOOD VENDING MACHINE					
Status: 8th year fee window opens: 02/04/2004		Entity: Small			
Window Opens: 02/04/2004		Surcharge Date: 08/05/2004		Expiration: N/A	
Fee Amt Due: \$1,045.00		Surchg Amt Due: \$0.00		Total Amt Due: \$1,045.00	
Fee Code: 2552		MAINTENANCE FEE DUE AT 7.5 YEARS.			
Surcharge Fee Code:					
Most recent events (up to 7):		2001/03/13 Petition Related to Maintenance Fees Granted. 2001/02/13 Petition Related to Maintenance Fees Filed. 2001/02/13 Surcharge, Petition to Accept Pymt After Exp, Unintentional. 2001/02/13 Payment of Maintenance Fee, 4th Yr, Small Entity. 2000/08/29 Maintenance Fee Reminder Mailed. 2000/06/23 Payor Number Assigned. --- End of Maintenance History ---			
Address for fee purposes:		COMPUTER PACKAGES, INC. 414 HUNGERFORD DRIVE ROCKVILLE, MD 20850			
NOTE: All USPTO fees are subject to change. If you are making a payment please check the www.uspto.gov website or contact the Maintenance fee branch (703-308-5068) to confirm the amount due on the date payment is to be made. A maintenance fee payment can be timely made using the certificate of mailing or transmission procedure set forth in 37 CFR 1.8.					
<a href="#">Run Another Query</a>					


[Need Help?](#) | [USPTO Home Page](#) | [Finance Online Shopping Page](#)

MELLON FEB 19 2005

1044  
65  
1,110

PTO/SB/45 (09-03)

Approved for use through 06/30/2006. OMB 0651-0016

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

# MAINTENANCE FEE TRANSMITTAL FORM

Address to:  
United States Patent and Trademark Office  
P.O. Box 371611  
Pittsburgh, PA 15250-1611

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "United States Patent and Trademark Office, P.O. Box 371611, Pittsburgh, PA 15250-1611" on

Signature

*Patrick Smith*

MAR 14 2005

Typed or printed name

PATRICK OSMITH

Enclosed herewith is the payment of the maintenance fee(s) for the listed patent(s).

- ☐ A check for the amount of \$ 1,110.00 for the full payment of the maintenance fee(s) and any necessary surcharge on the following patents is enclosed.
- ☐ The Director is hereby authorized to charge \$ \_\_\_\_\_ to cover the payment of the fee(s) indicated below to Deposit Account No. \_\_\_\_\_.
- ☐ The Director is hereby authorized to charge any deficiency in the payment of the required fee(s) or credit any overpayment to Deposit Account No. \_\_\_\_\_.
- ☐ Payment by credit card. Form PTO-2038 is attached.

\* Information required by 37 CFR 1.366(c) (columns 1 & 4). Information requested under 37 CFR 1.366(d) (columns 2, 3, 5, & 6)

Item	Patent Number*	Maintenance Fee Amount (37 CFR 1.20 (e)-(g))	Surcharge Amount (37 CFR 1.20 (h)-(i)) Column 3	U.S. Application Number* [06/555,555]	Payment Year			Small Entity? **
	Column 1	Column 2		Column 4	Column 5			Column 6
					3.5 yrs	7.5 yrs	11.5 yrs	
1								
2								
3								
4								
5								
6								

Subtotals: Columns 2 & 3

Total Payment

\$1,110.00  
\$1,045.00

☐

additional sheets attached for listing additional patents.

## WARNING:

Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038

Respectfully submitted\*\*\*:

Customer's name:

Telephone:

Fax:

Customer's Signature:

Registration Number, if applicable:

Note: \*All correspondence will be forwarded to the "Fee Address" or to the "Correspondence Address" if no "Fee Address" has been provided. 37 CFR 1.363.

\*\* Payment of small entity fee is appropriate if small entity status still exists, see 37 CFR 1.27(g). To establish small entity status or to change status from small to large entity, note the requirements of 37 CFR 1.27 and 1.33(b).

\*\*\* WHERE MAINTENANCE FEE PAYMENTS ARE TO BE MADE BY AUTHORIZATION TO CHARGE A DEPOSIT ACCOUNT, BOTH CUSTOMER'S NAME AND SIGNATURE ARE REQUIRED.

This collection of information is required by 37 CFR 1.366. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 0.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA. 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: United States Patent and Trademark Office, P.O. Box 371611, Pittsburgh, PA 15250-1611.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

DIVISION

PTO/SB/47 (07-03)

Approved for use through 05/31/2006. OMB 0651-0016

U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**"FEE ADDRESS" INDICATION FORM**

2005 FEB 14 PM 3:46

Address to:  
Mail Stop M Correspondence  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RECEIVED  
MAR 14 2005  
OFFICE OF PETITIONS

**INSTRUCTIONS :** Only an address associated with a Customer Number can be established as the fee address for maintenance fee purposes (hereafter, fee address). A fee address should be specified when the patentee would like correspondence related to maintenance fees to be mailed to a different address than the correspondence address for the application. If there is a Customer Number already associated with the fee address for the patent or allowed application, check the first box below and provide the Customer Number in the space provided. If there is no Customer Number associated with the fee address for the patent or allowed application, you must check the second box below and attach a Request for Customer Number form (PTO/SB/125). For more information on Customer Numbers, see the Manual of Patent Examining Procedure (MPEP) § 403.

Please recognize as the "Fee Address" under the provisions of 37 CFR 1.363 the address associated with:

☐ Customer Number:

OR

☐ Request for Customer Number (PTO/SB/125) attached hereto in the following listed application(s) for which the Issue Fee has been paid for patent(s).

PATENT NUMBER (if known)	APPLICATION NUMBER
5,598,947	

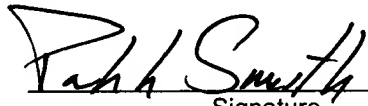
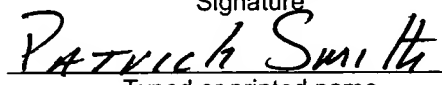
Completed by (check one):

☒ Applicant/Inventor

☐ Attorney or Agent of record \_\_\_\_\_  
(Reg. No.)

☐ Assignee of record of the entire interest. See 37 CFR 3.71.  
Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☐ Assignee recorded at Reel \_\_\_\_\_ Frame \_\_\_\_\_

  
Signature  
  
Typed or printed name

Requester's telephone number \_\_\_\_\_

Date \_\_\_\_\_

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \* Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 37 CFR 1.363. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop M Correspondence, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.  
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Any petition filed under 37 CFR 1.377 must be filed within 2 months of the action complained of, or within such other time as may be set in the action complained of. The petition must be accompanied by the proper petition fee. The petition may include a request that the petition fee be refunded if the refusal to accept and record the maintenance fee is determined to have resulted from an error by the Office.

Any petition filed under 37 CFR 1.377 must comply with the requirements of 37 CFR 1.181(b) and must be signed by an attorney or agent registered to practice before the Office, or by the patentee, the assignee, or other party in interest. A person or organization whose only responsibility insofar as the patent is concerned is the payment of a maintenance fee is not a party in interest for purposes 37 CFR 1.377. If the petition is signed by a person not registered to practice before the Office, the petition must indicate whether the person signing the petition is the patentee, assignee, or other party in interest. An assignee must comply with the requirements of 37 CFR 3.73(b) which is discussed in MPEP § 324.

Any petition under 37 CFR 1.377 should be marked on the front page of the communication to the attention of the Office of Petitions and addressed as follows:

Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

## 2590 Acceptance of Delayed Payment of Maintenance Fee in Expired Patent to Reinstate Patent

**37 CFR 1.378.** *Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.*

(a) The Commissioner may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable (paragraph (b) of this section) or unintentional (paragraph (c) of this section) and if the surcharge required by § 1.20(i) is paid as a condition of accepting payment of the maintenance fee. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the conditions set forth in 35 U.S.C. 41(c)(2).

(b) Any petition to accept an unavoidably delayed payment of a maintenance fee filed under paragraph (a) of this section must include:

- (1) the required maintenance fee set forth in § 1.20 (c)-(g);
- (2) the surcharge set forth in § 1.20(i)(1); and

(3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was

notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

(c) Any petition to accept an unintentionally delayed payment of a maintenance fee filed under paragraph (a) of this section must be filed within twenty-four months after the six-month grace period provided in § 1.362(e) and must include:

- (1) the required maintenance fee set forth in § 1.20 (c)-(g);
- (2) the surcharge set forth in § 1.20(i)(2); and
- (3) a statement that the delay in payment of the maintenance fee was unintentional.

(d) Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest.

(e) Reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a) of this section may be obtained by filing a petition for reconsideration within two months of, or such other time as set in, the decision refusing to accept the delayed payment of the maintenance fee. Any such petition for reconsideration must be accompanied by the petition fee set forth in § 1.17(h). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. If the delayed payment of the maintenance fee is not accepted, the maintenance fee and the surcharge set forth in § 1.20(i) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. Any petition fee under this section will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

37 CFR 1.378(a) provides that the Commissioner may accept the payment of any maintenance fee due on a patent based on an expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable or unintentional. The appropriate surcharge set forth in § 1.20(i) must be paid as a condition of accepting payment of the maintenance fee. The surcharges set at 37 CFR 1.20(i) are established pursuant to 35 U.S.C. 41(c) and, therefore, are not subject to small entity provisions of 35 U.S.C. 41(h). No separate petition fee is required for this petition. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired but will be subject to the intervening rights and provisions of 35 U.S.C. 41(c)(2).

Any petition under 37 CFR 1.378(b) or (c) should be marked on the front page of the communication to the attention of the Office of Petitions and addressed as follows:

Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

Any petition under 37 CFR 1.378 must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. A person or organization whose only responsibility insofar as the patent is concerned is the payment of a maintenance fee is not a party in interest for purposes of 37 CFR 1.378. If the petition is signed by a person not registered to practice before the Office, the petition must indicate that the person signing the petition is the patentee, assignee, or other party in interest. An assignee must comply with the requirements of 37 CFR 3.73(b) which is discussed in MPEP § 324.

37 CFR 1.378(e) provides a mechanism for obtaining reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a). This mechanism is a petition for reconsideration which may be filed within 2 months of, or such other time as set in, the decision refusing to accept the delayed payment of the maintenance fee. In contrast to petitions filed under paragraph (a), the petition for reconsideration requires the petition fee set forth in 37 CFR 1.17(h). After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. The maintenance fee and the surcharge submitted will be refunded if the delayed payment of the maintenance fee is not accepted. The refund will be made following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. The petition fee for filing the petition for reconsideration will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Office.

#### UNAVOIDABLE DELAY

37 CFR 1.378(b) provides that a patent may be reinstated at any time following expiration of the patent for failure to timely pay a maintenance fee. A petition to accept late payment of a maintenance fee, where the delay was unavoidable, must include:

(A) the required maintenance fee set forth in 37 CFR 1.20(e)-(g);

(B) the surcharge set forth in 37 CFR 1.20(i) (1); and

(C) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them. Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement.

As language in 35 U.S.C. 41(c)(1) is identical to that in 35 U.S.C. 133 (i.e., "unavoidable" delay), a late maintenance fee for the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. 133. See *Ray v. Lehman*, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting *In re Patent No. 4,409,763*, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), *aff'd sub nom. Rydeen v. Quigg*, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), *aff'd*, 937 F.2d 623 (Fed. Cir. 1991) (table), *cert. denied*, 502 U.S. 1075 (1992)). See MPEP § 711.03(c) for a general discussion of the "unavoidable" delay standard.

As 35 U.S.C. 41(c) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. *Ray*, 55 F.3d at 609, 34 USPQ2d at 1788. That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. *Id.* Thus, where the record fails to disclose that the patentee took reasonable steps, or discloses that the patentee took no steps, to ensure timely payment of the maintenance fee, 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) preclude accep-

tance of the delayed payment of the maintenance fee under 37 CFR 1.378(b).

In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, the patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. See *Patent No. 4,409,763, supra*. See also Final Rule entitled "Final Rules for Patent Maintenance Fees," published in the *Federal Register* at 49 *Fed. Reg.* 34716, 34722-23 (August 31, 1984), and republished in the *Official Gazette* at 1046 *Off. Gaz. Pat. Office* 28, 34 (September 25, 1984). Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office.

Thus, evidence that despite reasonable care on behalf of the patentee and/or the patentee's agents, and reasonable steps to ensure timely payment, the maintenance fee was unavoidably not paid, could be submitted in support of an argument that the delay in payment was unavoidable. For example, an error in a docketing system could possibly result in a finding that a delay in payment was unavoidable if it were shown that reasonable care was exercised in designing and operating the system and if it were shown that the patentee took reasonable steps to ensure that the patent was entered into the system to ensure timely payment of the maintenance fees.

#### UNINTENTIONAL DELAY

Public Law 102-444 amended 35 U.S.C. 41(c)(1) to permit the Commissioner to accept late payment of any maintenance fee filed within 24 months after the 6-month grace period, if the delay in payment is shown to the satisfaction of the Commissioner to have been unintentional. See MPEP § 711.03(c) for a general discussion of the "unintentional" delay standard.

In addition to the timeliness deadline set forth in the preceding paragraph, a petition filed under the unintentional standard of 37 CFR 1.378(c) must include:

(A) the required maintenance fee set forth in 37 CFR 1.20 (e) through (g);

(B) the surcharge for an unintentionally expired patent as set forth in 37 CFR 1.20(i)(2); and

(C) a statement that the delay in payment of the maintenance fee was unintentional.

A person seeking reinstatement of an expired patent should not make a statement that the delay in payment of the maintenance fee was unintentional unless the entire delay was unintentional, including the period from discovery that the maintenance fee was not timely paid until payment of the maintenance fee. For example, a statement that the delay in payment of the maintenance fee was unintentional would not be proper when the patentee becomes aware of an unintentional failure to timely pay the maintenance fee and then intentionally delays filing a petition for reinstatement of the patent under 37 CFR 1.378.

#### 2591 Intervening Rights in Reinstated Patents

Intervening rights in reinstated patents are provided by 35 U.S.C. 41(c)(2) which is reproduced in MPEP § 2501. No patent, the term of which has been maintained as a result of the acceptance of a late payment of a maintenance fee, shall abridge or affect the right of any person or his successors in business who made, purchased, imported, or used after the 6-month grace period but prior to the acceptance of the late maintenance fee anything protected by the patent, to continue the use or importation of, or to sell to others to be used or sold, the specific things made, purchased, imported, or used. A court before which such matter is in question may provide for the continued manufacture, use, importation, or sale of the thing made, purchased, imported, or used as specified, or for the manufacture, use, importation, or sale of which substantial preparation was made after the 6-month grace period but before the acceptance of the late maintenance fee; and it may also provide for the continued practice of any process, practiced, or for the practice of which substantial preparation was made, after the 6-month grace period but prior to the acceptance of the late maintenance fee, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced after the 6-month grace period but before the acceptance of the late maintenance fee.

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)

Mail to: Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703)305-9282.

Patent No. 5,598,947

Application Number 377,449

Issue Date Feb 4, 1997

Filing Date Jan 24, 1995

CAUTION: Mandatory Identifiers: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the serial number of the actual U.S. application (or reissue application) leading to issuance of that patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable

The above-identified patent:

- ☐ is a reissue of original Patent No. \_\_\_\_\_, original issue date \_\_\_\_\_,  
original application number \_\_\_\_\_,  
original filing date \_\_\_\_\_.
- ☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international  
application \_\_\_\_\_ filed on \_\_\_\_\_.

**CERTIFICATE OF MAILING (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231.

2/5/05  
Date

Patrick Smith  
Signature

Patrick Smith  
Typed or printed name of person signing Certificate



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

1. SMALL ENTITY

☐ Attached herewith is a verified statement establishing small entity status.

OR

☐ A verified statement establishing small entity status for this patent has been filed and it is confirmed that the current owner of this patent still qualifies for small entity status.

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

NOTE: 37 CFR 1.28(b) requires "Notification of any change in loss of entitlement to small entity status must be filed in...patent prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate pursuant to Section 1.19 of this part." From the wording of 37 CFR 1.28(a): notification of change of status (a) must be made even if the fee is paid as "other than a small entity" and (b) no notification is required if the change is to another small entity. See also 37 CFR 1.366(f).

☐ The status of this patent has changed from that of small entity to other than that of small entity.

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity Amount Fee (Code)		Small Entity Amount Fee (Code)	
<input type="checkbox"/>	\$ 3 1/2 yr fee (183)	<input type="checkbox"/>	\$ 3 1/2 yr fee (283)
<input type="checkbox"/>	\$ 7 1/2 yr fee (184)	<input type="checkbox"/>	\$ 7 1/2 yr fee (284)
<input type="checkbox"/>	\$ 11 1/2 yr fee (185)	<input type="checkbox"/>	\$ 11 1/2 yr fee (285)

MAINTENANCE FEE BEING SUBMITTED \$

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ (Fee Code 187) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE BEING SUBMITTED \$

5. MANNER OF PAYMENT

☒ Enclosed is a check for the sum of \$ 1,110.44 *Postn / Money Order*

☐ Please charge Deposit Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_. A duplicate copy of this authorization is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☐ The Commissioner is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. \_\_\_\_\_. A duplicate copy of this authorization is attached.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## 7. OVERPAYMENT

As to any overpayment made please

OR ☐ Credit to Deposit Account No. \_\_\_\_\_  
☒ Send refund check

## 8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

2/5/05  
Date

( ) \_\_\_\_\_  
Telephone Number

Paul Smith  
Signature(s) of Petitioner(s)

Patrick Smith  
Typed or printed name(s)

12335 Santa Monica Blvd  
Address

LA CA 90025

## ENCLOSURES:

- ☒ Maintenance Fee payment
- ☐ Small Entity Status Form
- ☐ Statement why maintenance fee was not paid timely
- ☐ Surcharge
- ☐ \_\_\_\_\_

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

NOTE: 37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. Such petition must be in the form of a verified statement if made by a person not registered to practice before the Patent and Trademark Office." Accordingly, the following declaration must be signed by any and all parties not registered to practice before the Patent and Trademark Office and presenting statements concerning the cause of delay.

The undersigned declares that the following statements made of his/her own knowledge are true, and that these statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the patent.

2/5/05  
Date

Patrick Smith  
Signature

Patrick Smith  
Typed or printed name

#### STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above)

(Please attach additional sheets if additional space is necessary)

**PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT  
OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))**

Docket Number (Optional)

Mail to: Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (703)305-9282.

Patent No. 5,598,947

Application Number 377,449

Issue Date Feb 4, 1997

Filing Date Jan 24, 1995

CAUTION: Mandatory Identifiers: Maintenance fee (and surcharge, if any) payment must correctly identify:  
(1) the patent number (or reissue patent number, if a reissue) and (2) the application number of  
the actual U.S. application (or reissue application) leading to issuance of that patent. 37 CFR  
1.366(c) and (d).

Also complete the following information, if applicable

The above-identified patent:

- ☐ is a reissue of original Patent No. \_\_\_\_\_, original issue date \_\_\_\_\_,  
original application number \_\_\_\_\_,  
original filing date \_\_\_\_\_.
- ☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international  
application \_\_\_\_\_ filed on \_\_\_\_\_.

**CERTIFICATE OF MAILING (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is  
being deposited with the United States Postal Service on the date shown below with sufficient postage  
as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Box DAC,  
Washington, D.C. 20231.

2/5/05  
Date

Patrick Smith  
Signature

Patrick Smith  
Typed or printed name of person signing Certificate

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

1. SMALL ENTITY

☐ Attached herewith is a verified statement establishing small entity status.

OR

☐ A verified statement establishing small entity status for this patent has been filed and it is confirmed that the current owner of this patent still qualifies for small entity status.

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

NOTE: 37 CFR 1.28(b) requires "Notification of any change in loss of entitlement to small entity status must be filed in...patent prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate pursuant to Section 1.19 of this part." From the wording of 37 CFR 1.28(a): notification of change of status (a) must be made even if the fee is paid as "other than a small entity" and (b) no notification is required if the change is to another small entity. See also 37 CFR 1.366(f).

☐ The status of this patent has changed from that of small entity to other than that of small entity.

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity				Small Entity			
Amount	Fee	(Code)		Amount	Fee	(Code)	
<input type="checkbox"/> \$	3 1/2 yr fee	(183)		<input type="checkbox"/> \$	3 1/2 yr fee	(283)	
<input type="checkbox"/> \$	7 1/2 yr fee	(184)		<input type="checkbox"/> \$	7 1/2 yr fee	(284)	
<input type="checkbox"/> \$	11 1/2 yr fee	(185)		<input type="checkbox"/> \$	11 1/2 yr fee	(285)	

MAINTENANCE FEE BEING SUBMITTED \$

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) of \$ (Fee Code 188) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

SURCHARGE BEING SUBMITTED \$

5. MANNER OF PAYMENT

☒ Enclosed is a check for the sum of \$1,110.00

☐ Please charge Deposit Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_. A duplicate copy of this authorization is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☐ The Commissioner is hereby authorized to charge any maintenance fee, surcharge or petition deficiency to Deposit Account No. \_\_\_\_\_. A duplicate copy of this authorization is attached.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## 7. OVERPAYMENT

As to any overpayment made please

205 FEB 14 PM 3:46

☐

Credit to Deposit Account No. \_\_\_\_\_

OR

☐

Send refund check.

## 8. STATEMENT

The delay in payment of the maintenance fee to this patent was unintentional.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE  
ACCEPTED AND THE PATENT REINSTATED.2/5/05  
Date(\_\_\_\_\_)\_\_\_\_\_  
Telephone NumberPatrick Smith  
Signature(s) of Petitioner(s)Patrick Smith  
Typed or printed name(s)\_\_\_\_\_  
Address

## ENCLOSURES:

☒

Maintenance Fee payment

☐

Small Entity Status Form

☐

Surcharge

☐

NOTE: 37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. Such petition must be in the form of a verified statement if made by a person not registered to practice before the Patent and Trademark Office." Accordingly, the following declaration must be signed by any and all parties not registered to practice before the Patent and Trademark Office and presenting statements concerning the cause of delay.

The undersigned declares that the following statements made of his/her own knowledge are true, and that these statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the patent.

\_\_\_\_\_  
Date

Patrick Smith  
Signature  
Patrick Smith  
Typed or printed name